

AMENDED IN SENATE JUNE 19, 1997

AMENDED IN SENATE JUNE 11, 1997

AMENDED IN ASSEMBLY APRIL 14, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 758

Introduced by Assembly Member Morrow

February 26, 1997

An act to amend Sections 22350, 22351, 22355, 22356.5, and 22360 of, to add Section 22351.5 to, and to repeal and add Section 22352 of, the Business and Professions Code, to amend Sections 1985.3, 1985.6, and 1987.1 of the Code of Civil Procedure, to amend Section 4406 of the Commercial Code, *and* to amend Sections 1158, 1560, and 1563 of the Evidence Code, ~~and to amend Section 1810.2 of the Vehicle Code,~~ relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 758, as amended, Morrow. Civil procedure: bank notices.

(1) Existing law requires, with specified exemptions, any person who makes more than 10 service of processes within the state during any calendar year to register as a process server with the county clerk of the county in which he or she resides. Under existing law, a certificate of registration as a registered process server includes prescribed information and may be issued to a natural person or to a partnership or a

corporation upon payment of a \$100 fee to the county clerk for registration.

This bill would instead require a person to file and maintain a verified certificate of registration as a process server if the person serves process for compensation or in expectation of compensation, as specified. The bill would require the registrant to sign the certificate of registration under penalty of perjury. The bill would require that a completed fingerprint card be submitted to the Department of Justice and the Federal Bureau of Investigation as part of the initial filing and would authorize a presiding judge of the superior court to review a criminal record and revoke the registration. The registrant would be required to pay a \$100 fee, a fingerprint card fee, and an identification card fee to the county clerk. The bill would impose a state-mandated local program by imposing new or increased duties on county clerks with respect to the registration of process servers. The bill would also create new crimes by expanding the registration requirements and revise the definition of a crime by expanding the crime of perjury.

(2) Existing law authorizes issuance of a subpoena for the personal records of any consumer, as defined, and for employment records, and requires that a witness be given notice of a motion to quash or modify the subpoena for employment records.

This bill would provide that the notice of a motion to quash or modify a subpoena for personal records of any consumer may be given to a deposition officer, *as defined*. The bill would provide that the notice of a motion to quash or modify the subpoena for employment records be given at least 5 days prior to production to the witness and the deposition officer.

(3) Existing law authorizes a court to make an order quashing a subpoena, modifying it, or directing compliance with specified terms or conditions.

This bill would specify that the terms and conditions may include protective orders.

(4) Existing law, operative January 1, 1998, revises provisions governing bank notices to customers regarding account statements.

This bill would extend that operative date to January 1, 2001.



(5) Existing law authorizes an attorney or his or her representative to review and obtain specified patient records prior to the filing of any action if written authorization is given by the patient and prohibits copying by a medical provider, as specified.

This bill would prohibit copying by the medical provider's employer.

(6) Existing law requires a party who subpoenas business records from a person to pay the reasonable costs incurred if the person is not a party to the proceeding.

This bill would require X-ray records to be released to the deposition officer's professional photocopier, as specified.

~~(7) Existing law authorizes the Department of Motor Vehicles to establish requester codes for persons requesting information for businesses or commercial purposes from department records.~~

~~This bill would prohibit the department from issuing a person a requester code for serving process unless the person is registered as a process server.~~

~~(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 22350 of the Business and Professions Code is amended to read:

22350. (a) Any natural person who for compensation or in expectation of compensation serves process within this state shall file and maintain a verified certificate of registration as a process server with the county clerk of the county in which he or she resides or has his or her principal place of business. Any corporation or partnership that derives or expects to derive compensation from service of process within this state by an employee or an independent contractor shall also file and maintain a verified certificate of registration as a process server with the county clerk of the county in which the corporation or partnership has its principal place of business.

(b) This chapter shall not apply to any of the following:

(1) Any sheriff, marshal, or government employee who is acting in the course of his or her employment.

(2) An attorney or his or her employees.

(3) Any person who is specially appointed by a court to serve its process.

(4) A licensed private investigator or his or her employees.

SEC. 2. Section 22351 of the Business and Professions Code is amended to read:

22351. (a) The certificate of registration of a registrant who is a natural person shall contain the following:

(1) The name, age, address, and telephone number of the registrant.

(2) A statement, signed by the registrant under penalty of perjury, that the registrant has not been convicted of a felony.

(3) A statement that the registrant has been a resident of this state for a period of one year immediately preceding the filing of the certificate.

(4) A statement that the registrant will perform his or her duties as a process server in compliance with the

1 provisions of law governing the service of process in this
2 state.

3 (b) The certificate of registration of a registrant who
4 is a partnership or corporation shall contain the following:

5 (1) The names, ages, addresses, and telephone
6 numbers of the general partners or officers.

7 (2) A statement, signed by the general partners or
8 officers under penalty of perjury, that the general
9 partners or officers have not been convicted of a felony.

10 (3) A statement that the partnership or corporation
11 has been organized and existing continuously for a period
12 of one year immediately preceding the filing of the
13 certificate or a responsible managing employee, partner,
14 or officer has been previously registered under this
15 chapter.

16 (4) A statement that the partnership or corporation
17 will perform its duties as a process server in compliance
18 with the provisions of law governing the service of
19 process in this state.

20 SEC. 3. Section 22351.5 is added to the Business and
21 Professions Code, to read:

22 22351.5. (a) At the time of filing the initial certificate
23 of registration, the registrant shall also submit two
24 completed fingerprint cards, for submission to the
25 Department of Justice and the Federal Bureau of
26 Investigation, in order to verify that the registrant has not
27 been convicted of a felony.

28 (b) If, after processing the completed fingerprint
29 cards, the clerk is advised that the registrant has been
30 convicted of a felony, the presiding judge of the Superior
31 Court of the county in which the certificate of registration
32 is maintained is authorized to review the criminal record
33 and notify the registrant that the registration is revoked.

34 SEC. 4. Section 22352 of the Business and Professions
35 Code is repealed.

36 SEC. 5. Section 22352 is added to the Business and
37 Professions Code, to read:

38 22352. At the time of filing the initial certificate of
39 registration, a registrant shall pay the following fees to the
40 county clerk:

1 (a) A fee of one hundred dollars (\$100).

2 (b) A fee to cover the actual costs of processing the
3 completed fingerprint cards when submitted with the
4 initial certificate of registration.

5 (c) A fee to cover the actual cost of issuing a registered
6 process server identification card.

7 SEC. 6. Section 22355 of the Business and Professions
8 Code is amended to read:

9 22355. (a) The county clerk shall maintain a register
10 of process servers and assign a number and issue an
11 identification card to each process server. Upon renewal
12 of a certificate of registration, the same number shall be
13 assigned, provided there is no lapse in the period of
14 registration.

15 (b) The identification card shall be a card $3\frac{3}{8}$ inches
16 by $2\frac{1}{4}$ inches and shall contain at the top the title,
17 "Registered Process Server," followed by the registrant's
18 name, address, registration number, date of expiration,
19 and county of registration. In the case of a natural person,
20 it shall also contain a photograph of the registrant in the
21 lower left corner.

22 SEC. 7. Section 22356.5 of the Business and
23 Professions Code is amended to read:

24 22356.5. (a) In addition to the information required
25 by subdivision (b) of Section 22360, any proof of service
26 of any process which is signed by an independent
27 contractor of a registrant under this chapter shall indicate
28 that the proof of service was signed as an independent
29 contractor of a registered process server. The proof of
30 service shall indicate the county of registration and the
31 number assigned pursuant to Section 22355 of both the
32 independent contractor and the entity registered under
33 this chapter.

34 (b) No registrant shall permit any individual to sign
35 any proof of service of any process as an independent
36 contractor unless all of the following conditions are met:

37 (1) The independent contractor is performing
38 pursuant to a written independent contractor agreement
39 with the registrant.



(2) The independent contractor supplies proof of bonding under Section 22353, if applicable.

(3) The registrant exercises minimal supervision or control over the means of accomplishing the service of any process assigned by the registrant. The registrant may communicate a deadline for the service of process and request notification that such service has been completed.

(4) The registrant imposes no restrictions on the independent contractor's ability to perform services for others registered under this chapter.

(5) The independent contractor supplies proof that any required business licenses have been obtained.

(c) Persons not meeting the criteria of subdivision (b) shall be treated as employees of the registrant while persons meeting the criteria of subdivision (b) shall be treated as independent contractors.

(d) This section shall not preclude an independent determination of employment under any other provision of law.

SEC. 8. Section 22360 of the Business and Professions Code is amended to read:

22360. Any proof of service of any process which is signed by a registrant under this chapter shall indicate the county in which he or she is registered and the number assigned to him or her by Section 22355.

SEC. 9. Section 1985.3 of the Code of Civil Procedure is amended to read:

1985.3. (a) For purposes of this section, the following definitions apply:

(1) "Personal records" means the original or any copy of books, documents, or other writings pertaining to a consumer and which are maintained by any "witness" which is a physician, chiropractor, veterinarian, veterinary hospital, veterinary clinic, pharmacist, pharmacy, hospital, state or national bank, state or federal association (as defined in Section 5102 of the Financial Code), state or federal credit union, trust company, anyone authorized by this state to make or arrange loans that are secured by real property, security brokerage

1 firm, insurance company, title insurance company,
2 underwritten title company, escrow agent licensed
3 pursuant to Division 6 (commencing with Section 17000)
4 of the Financial Code or exempt from licensure pursuant
5 to Section 17006 of the Financial Code, attorney,
6 accountant, institution of the Farm Credit System, as
7 specified in Section 2002 of Title 12 of the United States
8 Code, or telephone corporation which is a public utility,
9 as defined in Section 216 of the Public Utilities Code, or
10 psychotherapist, as defined in Section 1010 of the
11 Evidence Code, or a private or public preschool,
12 elementary school, or secondary school.

13 (2) “Consumer” means any individual, partnership of
14 five or fewer persons, association, or trust which has
15 transacted business with, or has used the services of, the
16 witness or for whom the witness has acted as agent or
17 fiduciary.

18 (3) “Subpoenaing party” means the person or persons
19 causing a subpoena duces tecum to be issued or served in
20 connection with any civil action or proceeding pursuant
21 to this code, but shall not include the state or local
22 agencies described in Section 7465 of the Government
23 Code, or any entity provided for under Article VI of the
24 California Constitution in any proceeding maintained
25 before an adjudicative body of that entity pursuant to
26 Chapter 4 (commencing with Section 6000) of Division
27 3 of the Business and Professions Code.

28 (4) “*Deposition officer*” means a person who meets
29 the qualifications specified in paragraph (3) of
30 subdivision (d) of Section 2020.

31 (b) The date specified in a subpoena duces tecum for
32 the production of personal records shall not be less than
33 15 days from the date the subpoena is issued. Prior to the
34 date called for in the subpoena duces tecum for the
35 production of personal records, the subpoenaing party
36 shall serve or cause to be served on the consumer whose
37 records are being sought a copy of the subpoena duces
38 tecum, of the affidavit supporting the issuance of the
39 subpoena, and of the notice described in subdivision (e).
40 This service shall be made as follows:

1 (1) To the consumer personally, or at his or her last
2 known address, or in accordance with Chapter 5
3 (commencing with Section 1010) of Title 14 of Part 3, or,
4 if he or she is a party, to his or her attorney of record. If
5 the consumer is a minor, service shall be made on the
6 minor's parent, guardian, conservator, or similar
7 fiduciary, or if one of them cannot be located with
8 reasonable diligence, then service shall be made on any
9 person having the care or control of the minor or with
10 whom the minor resides or by whom the minor is
11 employed, and on the minor if the minor is at least 12
12 years of age.

13 (2) Not less than 10 days prior to the date for
14 production specified in the subpoena duces tecum, plus
15 the additional time provided by Section 1013 if service is
16 by mail.

17 (3) At least five days prior to service upon the
18 custodian of the records, plus the additional time
19 provided by Section 1013 if service is by mail.

20 (c) Prior to the production of the records, the
21 subpoenaing party shall do either of the following:

22 (1) Serve or cause to be served upon the witness a
23 proof of personal service or of service by mail attesting to
24 compliance with subdivision (b).

25 (2) Furnish the witness a written authorization to
26 release the records signed by the consumer or by his or
27 her attorney of record. The witness may presume that any
28 attorney purporting to sign the authorization on behalf of
29 the consumer acted with the consent of the consumer.

30 (d) A subpoena duces tecum for the production of
31 personal records shall be served in sufficient time to allow
32 the witness a reasonable time to locate and produce the
33 records or copies thereof.

34 Except as to records subpoenaed for a criminal
35 proceeding or records subpoenaed during trial, a
36 subpoena duces tecum served upon a witness with
37 records in more than one location shall be served no less
38 than 10 days prior to the date specified for production,
39 unless good cause is shown pursuant to subdivision (h).

1 (e) Every copy of the subpoena duces tecum and
2 affidavit served on a consumer or his or her attorney in
3 accordance with subdivision (b) shall be accompanied by
4 a notice, in a typeface designed to call attention to the
5 notice, indicating that (1) records about the consumer
6 are being sought from the witness named on the
7 subpoena; (2) if the consumer objects to the witness
8 furnishing the records to the party seeking the records,
9 the consumer must file papers with the court or serve a
10 written objection as provided in subdivision (g) prior to
11 the date specified for production on the subpoena; and
12 (3) if the party who is seeking the records will not agree
13 in writing to cancel or limit the subpoena, an attorney
14 should be consulted about the consumer's interest in
15 protecting his or her rights of privacy. If a notice of taking
16 of deposition is also served, that other notice may be set
17 forth in a single document with the notice required by
18 this subdivision.

19 (f) A subpoena duces tecum for personal records
20 maintained by a telephone corporation which is a public
21 utility, as defined in Section 216 of the Public Utilities
22 Code, shall not be valid or effective unless it includes a
23 consent to release, signed by the consumer whose records
24 are requested, as required by Section 2891 of the Public
25 Utilities Code.

26 (g) Any consumer whose personal records are sought
27 by a subpoena duces tecum and who is a party to the civil
28 action in which this subpoena duces tecum is served may,
29 prior to the date for production, bring a motion under
30 Section 1987.1 to quash or modify the subpoena duces
31 tecum. Notice of the bringing of that motion shall be
32 given to the witness and deposition officer prior to
33 production. *The failure to provide notice to the*
34 *deposition officer shall not invalidate the motion to quash*
35 *or modify the subpoena duces tecum.*

36 Any other consumer whose personal records are sought
37 by a subpoena duces tecum may, prior to the date of
38 production, serve on the requesting party and the witness
39 a written objection that specifies the specific grounds on

1 which production of the personal records should be
2 prohibited.

3 No witness or deposition officer shall be required to
4 produce personal records after receipt of notice that such
5 a motion has been brought, except upon order of the
6 court in which the action is pending or by agreement of
7 the parties, witnesses, and consumers affected. No
8 witness shall be required to produce personal records
9 after service of a written objection by a nonparty
10 consumer, except upon order of the court in which the
11 action is pending or by agreement of the parties,
12 witnesses, and consumers affected.

13 The party requesting a consumer's personal records
14 may bring a motion under Section 1987.1 to enforce the
15 subpoena within 20 days of service of the written
16 objection. The motion shall be accompanied by a
17 declaration showing a reasonable and good faith attempt
18 at informal resolution of the dispute between the party
19 requesting the personal records and the consumer or the
20 consumer's attorney.

21 (h) Upon good cause shown and provided that the
22 rights of witnesses and consumers are preserved, a
23 subpoenaing party shall be entitled to obtain an order
24 shortening the time for service of a subpoena duces
25 tecum or waiving the requirements of subdivision (b)
26 where due diligence by the subpoenaing party has been
27 shown.

28 (i) Nothing contained in this section shall be construed
29 to apply to any subpoena duces tecum which does not
30 request the records of any particular consumer or
31 consumers and which requires a custodian of records to
32 delete all information which would in any way identify
33 any consumer whose records are to be produced.

34 (j) This section shall not apply to proceedings
35 conducted under Division 1 (commencing with Section
36 50), Division 4 (commencing with Section 3200), Division
37 4.5 (commencing with Section 6100), or Division 4.7
38 (commencing with Section 6200) of the Labor Code.

(k) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the personal records sought by a subpoena duces tecum.

SEC. 10. Section 1985.6 of the Code of Civil Procedure is amended to read:

1985.6. (a) For purposes of this section, the following definitions apply:

(1) "Employment records" means the original or any copy of books, documents, or other writings pertaining to the employment of any employee maintained by the current or former employer of the employee.

(2) "Employee" means any individual who is or has been employed by a witness subject to a subpoena duces tecum.

(3) "Subpoenaing party" means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(4) "*Deposition officer*" means a person who meets the qualifications specified in paragraph (3) of subdivision (d) of Section 2020.

(b) The date specified in a subpoena duces tecum for the production of employment records shall not be less than 15 days from the date the subpoena is issued. Prior to the date called for in the subpoena duces tecum of the production of employment records, the subpoenaing party shall serve or cause to be served on the employee whose records are being sought a copy of: the subpoena duces tecum; the affidavit supporting the issuance of the subpoena, if any; and the notice described in subdivision (e). This service shall be made as follows:

(1) To the employee personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or,

1 if he or she is a party, to his or her attorney of record. If
2 the employee is a minor, service shall be made on the
3 minor's parent, guardian, conservator, or similar
4 fiduciary, or if one of them cannot be located with
5 reasonable diligence, then service shall be made on any
6 person having the care or control of the minor, or with
7 whom the minor resides, and on the minor if the minor
8 is at least 12 years of age.

9 (2) Not less than 10 days prior to the date for
10 production specified in the subpoena duces tecum, plus
11 the additional time provided by Section 1013 if service is
12 by mail.

13 (3) At least five days prior to service upon the
14 custodian of the employment records, plus the additional
15 time provided by Section 1013 if service is by mail.

16 (c) Prior to the production of the records, the
17 subpoenaing party shall either:

18 (1) Serve or cause to be served upon the witness a
19 proof of personal service or of service by mail attesting to
20 compliance with subdivision (b).

21 (2) Furnish the witness a written authorization to
22 release the records signed by the employee or by his or
23 her attorney of record. The witness may presume that the
24 attorney purporting to sign the authorization on behalf of
25 the employee acted with the consent of the employee.

26 (d) A subpoena duces tecum for the production of
27 employment records shall be served in sufficient time to
28 allow the witness a reasonable time to locate and produce
29 the records or copies thereof.

30 Except as to records subpoenaed for a criminal
31 proceeding or records subpoenaed during trial, a
32 subpoena duces tecum served upon a witness with
33 records in more than one location shall be served no less
34 than 10 days prior to the date specified for production,
35 unless good cause is shown pursuant to subdivision (g).

36 (e) Every copy of the subpoena duces tecum and
37 affidavit served on an employee or his or her attorney in
38 accordance with subdivision (b) shall be accompanied by
39 a notice, in a typeface designed to call attention to the
40 notice, indicating that (1) employment records about the

1 employee are being sought from the witness named on
2 the subpoena; (2) the employment records may be
3 protected by a right of privacy; (3) if the employee
4 objects to the witness furnishing the records to the party
5 seeking the records the employee shall file papers with
6 the court prior to the date specified for production on the
7 subpoena; and (4) if the subpoenaing party does not
8 agree in writing to cancel or limit the subpoena, an
9 attorney should be consulted about the employee's
10 interest in protecting his or her rights of privacy. If a
11 notice of taking of deposition is also served, that other
12 notice may be set forth in a single document with the
13 notice required by this subdivision.

14 (f) Any employee whose employment records are
15 sought by a subpoena duces tecum may, prior to the date
16 for production, bring a motion under Section 1987.1 to
17 quash or modify the subpoena duces tecum. Notice of the
18 bringing of that motion shall be given to the witness and
19 the deposition officer at least five days prior to
20 production. *The failure to provide notice to the*
21 *deposition officer shall not invalidate the motion to quash*
22 *or modify the subpoena duces tecum.*

23 Any nonparty employee whose employment records
24 are sought by a subpoena duces tecum may, prior to the
25 date of production, serve on the requesting party and the
26 witness a written objection that specifies the specific
27 grounds on which production of the employment records
28 should be prohibited.

29 No witness shall be required to produce employment
30 records after receipt of notice that such a motion has been
31 brought, except upon order of the court in which the
32 action is pending or by agreement of the parties,
33 witnesses, and employees affected. No witness shall be
34 required to produce employment records after service of
35 a written objection by a nonparty employee, except upon
36 order of the court in which the action is pending or by
37 agreement of the parties, witnesses, and employees
38 affected.

39 The party requesting an employee's employment
40 records may bring a motion under subdivision (c) of

1 Section 1987 to enforce the subpoena within 20 days of
2 service of the written objection. The motion shall be
3 accompanied by a declaration showing a reasonable and
4 good faith attempt at informal resolution of the dispute
5 between the party requesting the employment records
6 and the employee or the employee's attorney.

7 (g) Upon good cause shown and provided that the
8 rights of witness and employees are preserved, a
9 subpoenaing party shall be entitled to obtain an order
10 shortening the time for service of a subpoena duces
11 tecum or waiving the requirements of subdivision (b)
12 where due diligence by the subpoenaing party has been
13 shown.

14 (h) Nothing contained in this section shall be
15 construed to apply to any subpoena duces tecum which
16 does not request the records of any particular employee
17 or employees and which requires a custodian of records
18 to delete all information which would in any way identify
19 any employee whose records are to be produced.

20 (i) This section shall not apply to proceedings
21 conducted under Division 1 (commencing with Section
22 50), Division 4 (commencing with Section 3200), Division
23 4.5 (commencing with Section 6100), or Division 4.7
24 (commencing with Section 6200) of the Labor Code.

25 (j) Failure to comply with this section shall be
26 sufficient basis for the witness to refuse to produce the
27 employment records sought by subpoena duces tecum.

28 SEC. 11. Section 1987.1 of the Code of Civil Procedure
29 is amended to read:

30 1987.1. When a subpoena requires the attendance of
31 a witness or the production of books, documents or other
32 things before a court, or at the trial of an issue therein, or
33 at the taking of a deposition, the court, upon motion
34 reasonably made by the party, the witness, or any
35 consumer described in Section 1985.3, or upon the court's
36 own motion after giving counsel notice and an
37 opportunity to be heard, may make an order quashing the
38 subpoena entirely, modifying it, or directing compliance
39 with it upon such terms or conditions as the court shall
40 declare, including protective orders. In addition, the

1 court may make any other order as may be appropriate
2 to protect the parties, the witness, or the consumer from
3 unreasonable or oppressive demands including
4 unreasonable violations of a witness's or consumer's right
5 of privacy. Nothing herein shall require any witness or
6 party to move to quash, modify, or condition any
7 subpoena duces tecum of personal records of any
8 consumer served under paragraph (1) of subdivision (b)
9 of Section 1985.3.

10 SEC. 12. Section 4406 of the Commercial Code, as
11 amended by Section 29 of Chapter 589 of the Statutes of
12 1993, is amended to read:

13 4406. (a) A bank that sends or makes available to a
14 customer a statement of account showing payment of
15 items for the account shall either return or make available
16 to the customer the items paid or provide information in
17 the statement of account sufficient to allow the customer
18 reasonably to identify the items paid. The statement of
19 account provides sufficient information if the item is
20 described by item number, amount, and date of payment.
21 If the bank does not return the items, it shall provide in
22 the statement of account the telephone number that the
23 customer may call to request an item or a legible copy
24 thereof pursuant to subdivision (b).

25 (b) If the items are not returned to the customer, the
26 person retaining the items shall either retain the items or,
27 if the items are destroyed, maintain the capacity to
28 furnish legible copies of the items until the expiration of
29 seven years after receipt of the items. A customer may
30 request an item from the bank that paid the item, and that
31 bank shall provide in a reasonable time either the item or,
32 if the item has been destroyed or is not otherwise
33 obtainable, a legible copy of the item. A bank shall
34 provide, upon request and without charge to the
35 customer, at least two items or a legible copy thereof with
36 respect to each statement of account sent to the
37 customer.

38 (c) If a bank sends or makes available a statement of
39 account or items pursuant to subdivision (a), the
40 customer shall exercise reasonable promptness in



1 examining the statement or the items to determine
2 whether any payment was not authorized because of an
3 alteration of an item or because a purported signature by
4 or on behalf of the customer was not authorized. If, based
5 on the statement or items provided, the customer should
6 reasonably have discovered the unauthorized payment,
7 the customer shall promptly notify the bank of the
8 relevant facts.

9 (d) If the bank proves that the customer failed, with
10 respect to an item, to comply with the duties imposed on
11 the customer by subdivision (c), the customer is
12 precluded from asserting any of the following against the
13 bank:

14 (1) The customer's unauthorized signature or any
15 alteration on the item if the bank also proves that it
16 suffered a loss by reason of the failure.

17 (2) The customer's unauthorized signature or
18 alteration by the same wrongdoer on any other item paid
19 in good faith by the bank if the payment was made before
20 the bank received notice from the customer of the
21 unauthorized signature or alteration and after the
22 customer had been afforded a reasonable period of time,
23 not exceeding 30 days, in which to examine the item or
24 statement of account and notify the bank.

25 (e) If subdivision (d) applies and the customer proves
26 that the bank failed to exercise ordinary care in paying
27 the item and that the failure contributed to loss, the loss
28 is allocated between the customer precluded and the
29 bank asserting the preclusion according to the extent to
30 which the failure of the customer to comply with
31 subdivision (c) and the failure of the bank to exercise
32 ordinary care contributed to the loss. If the customer
33 proves that the bank did not pay the item in good faith,
34 the preclusion under subdivision (d) does not apply.

35 (f) Without regard to care or lack of care of either the
36 customer or the bank, a customer who does not within
37 one year after the statement or items are made available
38 to the customer (subdivision (a)) discover and report the
39 customer's unauthorized signature on or any alteration
40 on the item is precluded from asserting against the bank

1 the unauthorized signature or alteration. If there is a
2 preclusion under this subdivision, the payer bank may not
3 recover for breach of warranty under Section 4208 with
4 respect to the unauthorized signature or alteration to
5 which the preclusion applies.

6 (g) This section shall remain in effect only until
7 January 1, 2001, and as of that date is repealed, unless a
8 later enacted statute, which is enacted before January 1,
9 2001, deletes or extends that date.

10 SEC. 13. Section 4406 of the Commercial Code, as
11 amended by Section 30 of Chapter 589 of the Statutes of
12 1993, is amended to read:

13 4406. (a) A bank that sends or makes available to a
14 customer a statement of account showing payment of
15 items for the account shall either return or make available
16 to the customer the items paid or provide information in
17 the statement of account sufficient to allow the customer
18 to identify the items paid. If the bank does not return the
19 items, it shall provide in the statement of account the
20 telephone number that the customer may call to request
21 an item or a legible copy thereof pursuant to subdivision
22 (b).

23 (b) If the items are not returned to the customer, the
24 person retaining the items shall either retain the items or,
25 if the items are destroyed, maintain the capacity to
26 furnish legible copies of the items until the expiration of
27 seven years after receipt of the items. A customer may
28 request an item from the bank that paid the item, and that
29 bank shall provide in a reasonable time either the item or,
30 if the item has been destroyed or is not otherwise
31 obtainable, a legible copy of the item. A bank shall
32 provide, upon request and without charge to the
33 customer, at least two items or a legible copy thereof with
34 respect to each statement of account sent to the
35 customer.

36 (c) If a bank sends or makes available a statement of
37 account or items pursuant to subdivision (a), the
38 customer shall exercise reasonable promptness in
39 examining the statement or the items to determine
40 whether any payment was not authorized because of an



1 alteration of an item or because a purported signature by
2 or on behalf of the customer was not authorized. If, based
3 on the statement or items provided, the customer should
4 reasonably have discovered the unauthorized payment,
5 the customer shall promptly notify the bank of the
6 relevant facts.

7 (d) If the bank proves that the customer failed, with
8 respect to an item, to comply with the duties imposed on
9 the customer by subdivision (c), the customer is
10 precluded from asserting any of the following against the
11 bank:

12 (1) The customer's unauthorized signature or any
13 alteration on the item if the bank also proves that it
14 suffered a loss by reason of the failure.

15 (2) The customer's unauthorized signature or
16 alteration by the same wrongdoer on any other item paid
17 in good faith by the bank if the payment was made before
18 the bank received notice from the customer of the
19 unauthorized signature or alteration and after the
20 customer had been afforded a reasonable period of time,
21 not exceeding 30 days, in which to examine the item or
22 statement of account and notify the bank.

23 (e) If subdivision (d) applies and the customer proves
24 that the bank failed to exercise ordinary care in paying
25 the item and that the failure contributed to loss, the loss
26 is allocated between the customer precluded and the
27 bank asserting the preclusion according to the extent to
28 which the failure of the customer to comply with
29 subdivision (c) and the failure of the bank to exercise
30 ordinary care contributed to the loss. If the customer
31 proves that the bank did not pay the item in good faith,
32 the preclusion under subdivision (d) does not apply.

33 (f) Without regard to care or lack of care of either the
34 customer or the bank, a customer who does not within
35 one year after the statement or items are made available
36 to the customer (subdivision (a)) discover and report the
37 customer's unauthorized signature on or any alteration
38 on the item is precluded from asserting against the bank
39 the unauthorized signature or alteration. If there is a
40 preclusion under this subdivision, the payer bank may not

1 recover for breach of warranty under Section 4208 with
2 respect to the unauthorized signature or alteration to
3 which the preclusion applies.

4 (g) This section shall become operative on January 1,
5 2001.

6 SEC. 14. Section 1158 of the Evidence Code is
7 amended to read:

8 1158. Whenever, prior to the filing of any action or the
9 appearance of a defendant in an action, an attorney at law
10 or his or her representative presents a written
11 authorization therefor signed by an adult patient, by the
12 guardian or conservator of his or her person or estate, or,
13 in the case of a minor, by a parent or guardian of the
14 minor, or by the personal representative or an heir of a
15 deceased patient, or a copy thereof, a physician and
16 surgeon, dentist, registered nurse, dispensing optician,
17 registered physical therapist, podiatrist, licensed
18 psychologist, osteopathic physician and surgeon,
19 chiropractor, clinical laboratory bioanalyst, clinical
20 laboratory technologist, or pharmacist or pharmacy, duly
21 licensed as such under the laws of the state, or a licensed
22 hospital, shall make all of the patient's records under his,
23 hers or its custody or control available for inspection and
24 copying by the attorney at law or his, or her,
25 representative, promptly upon the presentation of the
26 written authorization.

27 No copying may be performed by any medical provider
28 or employer enumerated above, or by an agent thereof,
29 when the requesting attorney has employed a
30 professional photocopier or anyone identified in Section
31 22451 of the Business and Professions Code as his or her
32 representative to obtain or review the records on his or
33 her behalf. The presentation of the authorization by the
34 agent on behalf of the attorney shall be sufficient proof
35 that the agent is the attorney's representative.

36 Failure to make the records available, during business
37 hours, within five days after the presentation of the
38 written authorization, may subject the person or entity
39 having custody or control of the records to liability for all

1 reasonable expenses, including attorney's fees, incurred
2 in any proceeding to enforce this section.

3 All reasonable costs incurred by any person or entity
4 enumerated above in making patient records available
5 pursuant to this section may be charged against the
6 person whose written authorization required the
7 availability of the records.

8 "Reasonable cost," as used in this section, shall include,
9 but not be limited to, the following specific costs: ten
10 cents (\$0.10) per page for standard reproduction of
11 documents of a size 8¹/₂ by 14 inches or less; twenty cents
12 (\$0.20) per page for copying of documents from
13 microfilm; actual costs for the reproduction of oversize
14 documents or the reproduction of documents requiring
15 special processing which are made in response to an
16 authorization; reasonable clerical costs incurred in
17 locating and making the records available to be billed at
18 the maximum rate of sixteen dollars (\$16) per hour per
19 person, computed on the basis of four dollars (\$4) per
20 quarter hour or fraction thereof; actual postage charges;
21 and actual costs, if any, charged to the witness by a third
22 person for the retrieval and return of records held by that
23 third person.

24 Where the records are delivered to the attorney or the
25 attorney's representative for inspection or photocopying
26 at the record custodian's place of business, the only fee for
27 complying with the authorization shall not exceed fifteen
28 dollars (\$15), plus actual costs, if any, charged to the
29 record custodian by a third person for retrieval and
30 return of records held offsite by the third person.

31 SEC. 15. Section 1560 of the Evidence Code is
32 amended to read:

33 1560. (a) As used in this article:

34 (1) "Business" includes every kind of business
35 described in Section 1270.

36 (2) "Record" includes every kind of record
37 maintained by such a business.

38 (b) Except as provided in Section 1564, when a
39 subpoena duces tecum is served upon the custodian of
40 records or other qualified witness of a business in an

1 action in which the business is neither a party nor the
2 place where any cause of action is alleged to have arisen,
3 and the subpoena requires the production of all or any
4 part of the records of the business, it is sufficient
5 compliance therewith if the custodian or other qualified
6 witness, within five days after the receipt of the subpoena
7 in any criminal action or within the time agreed upon by
8 the party who served the subpoena and the custodian or
9 other qualified witness, or within 15 days after the receipt
10 of the subpoena in any civil action or within the time
11 agreed upon by the party who served the subpoena and
12 the custodian or other qualified witness, delivers by mail
13 or otherwise a true, legible, and durable copy of all the
14 records described in the subpoena to the clerk of the
15 court or to the judge if there be no clerk or to such other
16 person as described in subdivision (c) of Section 2026 of
17 the Code of Civil Procedure, together with the affidavit
18 described in Section 1561.

19 (c) The copy of the records shall be separately
20 enclosed in an inner envelope or wrapper, sealed, with
21 the title and number of the action, name of witness, and
22 date of subpoena clearly inscribed thereon; the sealed
23 envelope or wrapper shall then be enclosed in an outer
24 envelope or wrapper, sealed, and directed as follows:

25 (1) If the subpoena directs attendance in court, to the
26 clerk of such court, or to the judge thereof if there be no
27 clerk.

28 (2) If the subpoena directs attendance at a deposition,
29 to the officer before whom the deposition is to be taken,
30 at the place designated in the subpoena for the taking of
31 the deposition or at the officer's place of business.

32 (3) In other cases, to the officer, body, or tribunal
33 conducting the hearing, at a like address.

34 (d) Unless the parties to the proceeding otherwise
35 agree, or unless the sealed envelope or wrapper is
36 returned to a witness who is to appear personally, the
37 copy of the records shall remain sealed and shall be
38 opened only at the time of trial, deposition, or other
39 hearing, upon the direction of the judge, officer, body, or
40 tribunal conducting the proceeding, in the presence of all

1 parties who have appeared in person or by counsel at the
2 trial, deposition, or hearing. Records which are original
3 documents and which are not introduced in evidence or
4 required as part of the record shall be returned to the
5 person or entity from whom received. Records which are
6 copies may be destroyed.

7 (e) As an alternative to the procedures described in
8 subdivisions (b), (c), and (d), the subpoenaing party may
9 direct the witness to make the records available for
10 inspection or copying by the party's attorney or the
11 attorney's representative at the witness' business address
12 under reasonable conditions during normal business
13 hours. Normal business hours, as used in this subdivision,
14 means those hours that the business of the witness is
15 normally open for business ~~at that address and shall total~~
16 ~~not less than 30 hours per week to the public.~~ It shall be
17 the responsibility of the attorney's representative to
18 deliver any copy of the records as directed in the
19 subpoena.

20 SEC. 16. Section 1563 of the Evidence Code is
21 amended to read:

22 1563. (a) This article shall not be interpreted to
23 require tender or payment of more than one witness fee
24 and one mileage fee or other charge unless there is an
25 agreement to the contrary.

26 (b) All reasonable costs incurred in a civil proceeding
27 by any witness which is not a party with respect to the
28 production of all or any part of business records the
29 production of which is requested pursuant to a subpoena
30 duces tecum may be charged against the party serving
31 the subpoena duces tecum.

32 (1) "Reasonable cost," as used in this section, shall
33 include, but not be limited to, the following specific costs:
34 ten cents (\$0.10) per page for standard reproduction of
35 documents of a size 8¹/₂ by 14 inches or less; twenty cents
36 (\$0.20) per page for copying of documents from
37 microfilm; actual costs for the reproduction of oversize
38 documents or the reproduction of documents requiring
39 special processing which are made in response to a
40 subpoena; reasonable clerical costs incurred in locating

1 and making the records available to be billed at the
2 maximum rate of sixteen dollars (\$16) per hour per
3 person, computed on the basis of four dollars (\$4) per
4 quarter hour or fraction thereof; actual postage charges;
5 and actual costs, if any, charged to the witness by a third
6 person for the retrieval and return of records held by that
7 third person.

8 (2) The requesting party shall not be required to pay
9 those costs or any estimate thereof prior to the time the
10 records are available for delivery pursuant to the
11 subpoena, but the witness may demand payment of costs
12 pursuant to this section simultaneous with actual delivery
13 of the subpoenaed records, and until such time as
14 payment is made, is under no obligation to deliver the
15 records.

16 (3) The witness shall submit an itemized statement for
17 the costs to the requesting party setting forth the
18 reproduction and clerical costs incurred by the witness.
19 Upon demand by the requesting party, the witness shall
20 furnish a statement setting forth the actions taken by the
21 witness in justification of the costs.

22 (4) The requesting party may petition the court in
23 which the action is pending to recover from the witness
24 all or a part of the costs paid to the witness, or to reduce
25 all or a part of the costs charged by the witness, pursuant
26 to this subdivision, on the grounds that such costs were
27 excessive. Upon the filing of the petition the court shall
28 issue an order to show cause and from the time the order
29 is served on the witness the court has jurisdiction over the
30 witness. The court may hear testimony on the order to
31 show cause and if it finds that the costs demanded and
32 collected, or charged but not collected, exceed the
33 amount authorized by this subdivision, it shall order the
34 witness to remit to the requesting party, or reduce its
35 charge to the requesting party by an amount equal to, the
36 amount of the excess. In the event that the court finds the
37 costs excessive and charged in bad faith by the witness,
38 the court shall order the witness to remit the full amount
39 of the costs demanded and collected, or excuse the
40 requesting party from any payment of costs charged but

1 not collected, and the court shall also order the witness to
2 pay the requesting party the amount of the reasonable
3 expenses incurred in obtaining the order including
4 attorney's fees. If the court finds the costs were not
5 excessive, the court shall order the requesting party to
6 pay the witness the amount of the reasonable expenses
7 incurred in defending the petition, including attorney's
8 fees.

9 (5) If a subpoena is served to compel the production
10 of business records and is subsequently withdrawn, or is
11 quashed, modified or limited on a motion made other
12 than by the witness, the witness shall be entitled to
13 reimbursement pursuant to paragraph (1) for all costs
14 incurred in compliance with the subpoena to the time
15 that the requesting party has notified the witness that the
16 subpoena has been withdrawn or quashed, modified or
17 limited. In the event the subpoena is withdrawn or
18 quashed, if those costs are not paid within 30 days after
19 demand therefor, the witness may file a motion in the
20 court in which the action is pending for an order
21 requiring payment, and the court shall award the
22 payment of expenses and attorney's fees in the manner
23 set forth in paragraph (4).

24 (6) Where the records are delivered to the attorney or
25 the attorney's representative for inspection or
26 photocopying at the witness' place of business, the only
27 fee for complying with the subpoena shall not exceed
28 fifteen dollars (\$15), plus actual costs, if any, charged to
29 the witness by a third person for retrieval and return of
30 records held offsite by the third person. If the records are
31 retrieved from microfilm, the reasonable cost, as defined
32 in paragraph (1), shall also apply. If the records are
33 X-rays, the records shall be released to the deposition
34 officer's professional photocopier, as identified in Section
35 22451 of the Business and Professions Code, to be
36 duplicated offsite. If records are released to the
37 deposition officer's professional photocopier, the records
38 shall be returned to the witness custodian within five
39 working days.

(c) When the personal attendance of the custodian of a record or other qualified witness is required pursuant to Section 1564, in a civil proceeding, he or she shall be entitled to the same witness fees and mileage permitted in a case where the subpoena requires the witness to attend and testify before a court in which the action or proceeding is pending and to any additional costs incurred as provided by subdivision (b).

~~SEC. 17. Section 1810.2 of the Vehicle Code is amended to read:~~

~~1810.2. (a) The department may establish commercial requester accounts for individuals or organizations and issue requester codes for the purpose of obtaining information from the department's files, except as prohibited by Section 1808.21.~~

~~(b) Commercial requester account applications shall include the requester's name, address, type of business, a specific reason for requesting information, and the name of the person responsible for the business or firm.~~

~~(c) The department shall establish a commercial requester account when it determines that the applicant has a legitimate business need for the information requested and when the applicant files a bond in the amount of fifty thousand dollars (\$50,000) and pays a two hundred fifty dollar (\$250) filing fee. If the applicant does not request and is not issued a requester code permitting the applicant access to residence address information, only a filing fee of fifty dollars (\$50) shall be required with the original application and each biennial renewal application.~~

~~(d) An individual requester code shall be issued for a period not to exceed five years and may be renewed upon application for additional periods not to exceed five years each.~~

~~(e) A requester code may be denied to any person unless the proposed use of the information from department records is related to legitimate business or commercial purposes of that person. A requester code may be canceled immediately if the requested information is used for a purpose other than the purpose~~

1 ~~for which the requester code was issued. No person shall~~
2 ~~be issued a requester code for the purpose of serving~~
3 ~~process unless that person is registered pursuant to~~
4 ~~Section 22350 of the Business and Professions Code, or is~~
5 ~~specifically exempt from such registration. No person~~
6 ~~may distribute information obtained from the~~
7 ~~department unless the recipient is eligible to receive~~
8 ~~information under this chapter, or the person is~~
9 ~~registered pursuant to Section 22350 of the Business and~~
10 ~~Professions Code and executes a security agreement as~~
11 ~~determined by the department.~~

12 ~~SEC. 18.~~

13 *SEC. 17.* No reimbursement is required by this act
14 pursuant to Section 6 of Article XIII B of the California
15 Constitution for certain costs that may be incurred by a
16 local agency or school district because in that regard this
17 act creates a new crime or infraction, eliminates a crime
18 or infraction, or changes the penalty for a crime or
19 infraction, within the meaning of Section 17556 of the
20 Government Code, or changes the definition of a crime
21 within the meaning of Section 6 of Article XIII B of the
22 California Constitution.

23 However, notwithstanding Section 17610 of the
24 Government Code, if the Commission on State Mandates
25 determines that this act contains other costs mandated by
26 the state, reimbursement to local agencies and school
27 districts for those costs shall be made pursuant to Part 7
28 (commencing with Section 17500) of Division 4 of Title
29 2 of the Government Code. If the statewide cost of the
30 claim for reimbursement does not exceed one million
31 dollars (\$1,000,000), reimbursement shall be made from
32 the State Mandates Claims Fund.

33 Notwithstanding Section 17580 of the Government
34 Code, unless otherwise specified, the provisions of this act
35 shall become operative on the same date that the act
36 takes effect pursuant to the California Constitution.

O